

American Flat Road/Lucerne Access Right-of-Way Amendment

DRAFT

Finding of No Significant Impact

DOI-BLM-NV-C000-2013-0005-EA

September 2015



Background

In July of 2012 the Bureau of Land Management (BLM), Sierra Front Field Office received a right-of-way (ROW) amendment application from Comstock Mining, LLC. The request would amend their existing ROW issued on July 6, 2012, under BLM Case File NVN 091237. On August 29, 2012, the accepted their draft Plan of Development (POD). The draft POD described their proposal to:

- Modify the existing American Flat Road to more safely accommodate mining-related and public traffic from the intersection with State Route 342 to the turn-off to the Gold Hill (Masonic) Cemetery;
- Make improvements to the Lucerne Haul Road between Lot 51 and the Lucerne pit including three wedges of public lands in the pit;
- Realign the American Flat Road west of Lot 51 to segregate public and haul traffic to improve haul-traffic safety; and
- Reclaim a user-created road that runs south from the American Flat Road toward the former American Flat Mill site.

Determination

On the basis of the information contained in the *American Flat Road/Lucerne Haul Road Revised Draft Environmental Assessment* (EA) (DOI-BLM-NV-C000-2013-0005-EA), I have preliminarily determined that the Proposed Action does not constitute a major federal action having a significant effect on the human environment. Therefore an environmental impact statement (EIS) would not be required.

This finding is based on my consideration of the Council on Environmental Quality (CEQ) criteria for significance (40 CFR 1508.27), both with regard to the *context* and *intensity* of the impacts described in the Revised Draft EA, which is hereby incorporated by reference.

Context

The Project Area consists of the American Flat Road and Lucerne Haul Road. These two roads lie in between an existing heap-leach processing facility located to the west in American Flat, and an open pit mine located southeast and adjacent to State Route 342 (all on private lands). Modern mining operations, consisting open pit mining, haul road construction, modification, use, and processing mined material, have been occurring in the Project Area since at least 1978, in addition to those mining activities of earlier periods.

As detailed in Section 5.2.1 of the Revised Draft EA, there have been the following modern mining activities in the Project Area since 1978:

1. In 1977, the Houston Oil and Minerals Corp. (HOM) acquired the New York Mine. In 1978 work occurred to reopen access to the underground workings. HOM acquired the leases on all of the Gold Hill properties held by the Union Pacific Railroad and later by Minerals Engineering Co. In July 1978, HOM announced that operations at the Imperial Mine in Gold Hill would begin. Ore would be processed at a newly constructed 1,000-

ton processing facility (known as the “Comstock Mill”) in American Flat¹. The mill site (approximately five acres) consisted of a secondary crusher, agitator pond and eight other buildings. HOM constructed the American Flat Road between State Route 342 and their site (just east of Comstock Mining LLC’s existing heap-leach processing facility), including the ancillary road to the south of the existing road, in 1978 as a part of their operations.

In February 1980, massive rock slides occurred in the high wall of the open pit, causing excavation to be suspended. To continue to operate, the pit would have to be expanded east and State Route 342 would have to be relocated. Although these activities were approved by the Storey County Planning Commission, in February 1981 the plans were abandoned;

2. In early 1983, United Mining Corp. obtained the HOM holdings (the Comstock Mill and mining claims NMC 189979, NCM 10291, NCM 15110-15115) and restarted mining operations at the New Savage Mine. In April 1985, stating that the mill was operating at a loss because of the drop in gold and silver prices, United Mining Corps closed its operations (Smith, 1998). Between August and October 2006, the abandoned HOM structures were removed from public lands and the former tailings impoundment was reclaimed by El Paso Corp. Concrete, scrap metal, glass, plastic, etc. were buried on site;
3. On July 8, 1991, the BLM approved an environmental assessment for a Plan of Operations for Oliver Hills Mining Company (NVN 069300, N37-89-008P). The Plan was for the Billie the Kid and Lucerne Cut Project. The project included the removal of mined material from the Billie the Kid Pit, with waste rock placed into the Lucerne Cut Pit, and ore would be processed at the Haywood Process Facility in Moundhouse, Nevada. The project also included the construction and widening of an existing haul road (the existing haul road that is in use by Comstock Mining, LLC) (BLM, 1991);
4. In 1998 under Notice (N30-98-020N, reassigned as N 70048 in 2002) Plum Mining Co., LLC began to conduct exploration activities (18 drill holes) on public lands proximal to the unpatented mining claims in the Billie the Kid pit (NMC 108773) and Hartford-Lucerne Fractions (NMC 41460 and NMC 416042)². The Notice N 70048 was amended in January and September 1999 for the development of a small open pit mine on the Billie the Kid mining claim³. The amendments included the construction of haul road segments, one that would cross through Lot 51 (now considered a “bypass road,” different than the haul road currently used by Comstock Mining, LLC) and tie into the HOM road and American Flat Road under ROW N 56178. The haul road through Lot 51 was constructed by Plum Mining Co., LLC in 1999 under Notice N30-98-020N;

¹ Prior to January 1, 1981, mining and exploration activities were not subject regulations under 43 CFR 3809. Therefore, mining and exploration activities were not subject to Notice requirements until that time, and were not subject to compliance under NEPA or NHPA.

² Unpatented mining claims NMC 41460 and NMC 416042 are currently held by Comstock Mining, LLC.

³ Revised 43 CFR 3809 regulations became effective on January 20, 2001. Until that time, mining could occur on public lands under a Notice. As a result of these regulations, a Plan of Operations must be submitted for mining activities on public lands. Prior to this regulation, mining activities under a Notice did not trigger compliance under the NEPA or NHPA.

5. In January 2001, Plum Mining Co., LLC notified the BLM of its intent to conduct exploration activities on public lands under Notice (N 74191) in T16N R21E, Section 5;
6. In November 2003, GoldSpring Inc. acquired Plum Mining Co., LLC and the “Billie the Kid Project,” which included the Billie the Kid, Lucerne and Hartford Pits, as well as a 40-acre private land parcel in American Flat. In November 2003, Plum Mining Co., LLC began construction of the heap-leach processing facility in American Flat and improved the existing haul road through Lot 51 leading to the Lucerne and Hartford Pits;
7. On February 23, 2004, Plum Mining Co., LLC filed an application to install an above ground temporary, four-inch water pipeline from an existing well (on public land), to Plum Mining Co., LLC’s new heap leach processing facility being constructed on nearby on private lands (located in T16N R21E, Section 6, the site of Comstock Mining, LLC’s existing processing facility). On March 23, 2004, the BLM issued a categorical exclusion for the ROW, and on April 15, 2004, the amended ROW grant (N 78108) was issued for the water pipeline and well. The grant for the water pipeline was for six months and the well for 30 years. The ROW for the water pipeline expired on October 15, 2004. The heap leach facility was constructed during the summer of 2004. At the same time, Plum Mining Co., LLC requested a modification to their existing Storey County Special Use Permit (SUP) to include year round processing in American Flat, and year-round mining in the Lucerne pit, in addition to their on-going mining in the Billie the Kid pit;
8. In July of 2008, the NDEP modified Reclamation Permit (#0196) to Plum Mining Co., LLC which was originally issued in September of 2000. The BLM’s case file for Plum Mining Co., LLC was closed in June 2009.
9. On November 20, 2008, and amended on December 11, 2008, GoldSpring Inc. filed an exploration Notice (NVN 086559), after-the-fact, with the BLM for 29 drill holes and 21 drill pads in T16N R21E, Sections 5 and 8. These areas are on public land adjacent to, and east of State Route 342. The Notice would cover exploration between April 2008 and November 2010. Late in 2008 the BLM determined that the Notice was incomplete. During a compliance inspection in September 2010, the BLM determined that exploration was no longer occurring, however all surface reclamation activities had not been completed. A total of 2.57 acres of surface disturbance occurred on public land. In 2010 GoldSpring Inc. changed its name through a merger acquisition of Comstock Mining Inc., a wholly owned subsidiary; and
10. On July 6, 2012, the BLM issued a ROW for Comstock Mining LLC’s use of the American Flat Road under ROW NVN 091237. Under this ROW, Comstock Mining, LLC was been able to haul mined ore from the Lucerne pit to their heap-leach processing facility in American Flat. From July 2012 until February 2013, haul trucks transported material from the Lucerne pit north on State Route 342 onto the American Flat Road, then west to Comstock Mining LLC’s existing heap-leach processing facility in American Flat.

More recently, there have been several initiatives taken to resolve the long-term land tenure conflicts in the Project Area and Storey County. Once completed, these land use tenure adjustments would significantly decrease the amount of public lands within the Project Area (Figure 20 of the Revised Draft EA). Recent efforts include:

1. In 2013, the BLM Nevada State Cadastral confirmed the White House town lots were patented in December 1872 and February 1873, respectively (Figure 20). Approximately 297 feet of the American Flat Road crosses through the White House town lots. During a case file review, the BLM was unable to locate these patents in the Public Land Survey System (PLSS). According to the BLM Nevada State Cadastral, the townsite that encompasses the patents is not tied to the PLSS. It is likely that the patents were originally intended to be in Section 5; however, they could be partially in Section 6 (Morlan, 2012). Therefore, the location of the patents on the ground cannot be verified until a Cadastral survey is completed. In 2013, the BLM initiated the processing of the Cadastral survey to confirm the location of the White House patents. As the BLM has already verified the existence of the patents, no further action would be needed by the BLM once the Cadastral survey is completed. In 2014 Comstock Mining, LLC renovated the White House and uses it for administrative purposes.
2. On February 13, 2013, the BLM Nevada State Office allowed Comstock Mining, LLC's Class I Color of Title (COT) claim to proceed for Lot 51, which is located at the intersection of the American Flat Road and Lucerne Haul Road (Figure 20 of the Revised Draft EA). The result of the COT claim determination allowed for the removal of haul trucks from State Route 342 and Comstock Mining LLC's use on the non-exclusive Lucerne Haul Road through Lot 51. Approximately 1,485 feet of the American Flat Road and 860 feet of the Lucerne Haul Road are within Lot 51. A cadastral survey of Lot 51 is in-progress. *A Class I COT claim is non-discretionary.* Upon the conclusion of the survey, the BLM would proceed with the appraisal of the fair market value for the 25-acre parcel, then issue a patent to Comstock Mining, LLC.
3. On December 19, 2014 the National Defense Authorization Act for Fiscal Year 2015 (Act) was signed into law (Public Law [PL] 113-291). Included in this Act is Section 3009 (d), a provision affecting public lands managed by the BLM. Under Section 3009 (d) (3) the BLM shall convey to Storey County through a "quitclaim deed" all surface rights of the U.S. in and to the federal land within the conveyance boundary. The boundary of this conveyance area includes approximately 1,745 acres of public lands in Gold Hill and Virginia City (Figure 20 of the Revised Draft EA). The conveyance of lands by quitclaim deed would be subject to valid existing rights. The southern portion of this conveyance area includes the northern portion (approximately 2,435 feet) of the American Flat Road, between Lot 51 and State Route 342. The timeframe for this conveyance is unknown, although Congress expressed a sense that the conveyance should be completed in 18-months (June 19, 2016).

Intensity

1) Impacts that may be both beneficial and adverse.

The BLM has analyzed and disclosed the beneficial and adverse effects from the Proposed Action and other alternatives in Section 4.0 of the Revised Draft EA. Under the Proposed Action, a segment of the American Flat Road for approximately 912 feet would be realigned and constructed to segregate haul-traffic on the proposed exclusive use Lucerne Haul Road from public traffic. Since July of 2012, mined material from the Lucerne pit has been hauled to the heap-leach processing facility in American Flat. Haul-traffic causes displacement of wildlife species that may be present in the Project Area. The Project Area does not provide quality wildlife habitat; there are no sensitive biological resources in the Project Area. Haul road modifications would cause approximately 64.9 acres of disturbance in the Project Area. As described in Question #8, haul road modifications has the potential to adversely affect eight historic properties within the Project Area. Under the Proposed Action, Comstock Mining, LLC would continue to conduct mining activities in the Project Areas and utilize public land segments to move mined materials to their processing facility. Under the BLM's mandate to provide for multiple uses of public lands, including opportunities for mining, would be a beneficial socioeconomic effect under the Proposed Action.

2) The degree to which the proposed action affects public health or safety.

The operation of the haul road possess minimal risk to public health or safety. Comstock Mining, LLC is subject to the requirements by the Nevada Mine Safety and Health Administration (MSHA). The MSHA requires Comstock Mining, LLC to maintain an Emergency Response Plan in case of accidental spills. The MSHA requires Comstock Mining, LLC to maintain control, warning and directional signs along the American Flat Road and Lucerne Haul Road. Since the demolition of the American Flat Mill in early 2015, there has been a significant decrease in public use of the American Flat Road. Under the Proposed Action, a new segment of the Lucerne Haul Road would be constructed, thus segregating haul-traffic from public traffic, therefore alleviating the concern of potential collisions with motor vehicles.

3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

The Project Area is within the Virginia City National Historic District and National Historic Landmark. There are no park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas such as Areas of Critical Environmental Concern, within the Project Area.

4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

The BLM has conducted extensive outreach for this proposal, which is to amend an existing ROW for Comstock Mining, LLC. In February 2013 the BLM provided a 30-day public scoping period, along with two public workshops. In December 2014, the BLM provided a 30-day public review period for the draft EA, along with one public workshop. This draft FONSI supports the Revised Draft EA which has been made available, along with a draft Memorandum of Agreement (MOA), for a 30-day period. The BLM has detailed in Sections 4.0 and 5.0 of the

Revised Draft EA the well-known consequences from the construction, modification and use of a haul road. The effects from the Proposed Action are not highly controversial⁴.

5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

The BLM has detailed in Sections 4.0 and 5.0 of the Revised Draft EA the potential effects from the Proposed Action. The issues are well-understood and have been thoroughly analyzed. There is no uncertainty about the effects, nor is there unique or unknown risks presented by implementation of the Proposed Action.

6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

On July 6, 2012 the BLM issued a ROW to Comstock Mining, LLC for their use of the American Flat Road. The ROW was renewed until December 31, 2017. The BLM can renew ROWs as long as there are no changes from the original authorization under DM 516 11.9 (E) (9) “Renewals and assignments of leases, permits, or rights-of-ways where no additional rights are conveyed beyond those granted by the original authorizations.” This renewal did not establish a precedent for future actions with significant effects, because a non-federal alternative has been and is reasonable, therefore the effects from Comstock Mining LLC’s operations are disclosed, but not additive to the Proposed Action. Because Comstock Mining LLC’s ROW amendment includes haul road construction and modifications, the BLM has appropriately evaluated it under a ROW amendment process under an environmental assessment and not a categorical exclusion.

Under Title V of the Federal Land and Policy Management Act, the BLM can issue ROWs for up to 30-days. In limited circumstances, perpetual ROWs can also be issued. In the case of the Proposed Action, Comstock Mining, LLC has requested a 30-year ROW.

7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts.

Since July of 2012, Comstock Mining, LLC has been operating a heap-leach processing facility in American Flat, and conducting open-pit mining in the Lucerne pit. Mined ore has been transported from the pit to processing facility via a haul road that crosses public land segments. As described in Section 2.2.2, a reasonable⁵ non-federal alternative exists for Comstock Mining, LLC to continue to operate without BLM authorizations. The BLM has properly disclosed Comstock Mining LLC’s effects in Section 5.0. As these effects are not under BLM control, nor can the BLM prevent these effects, they are disclosed, however, these effects are not additive to the effects from the Proposed Action when considering 40 CFR 1508.27.

8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the NRHP or may cause loss of destruction of significant scientific, cultural, or historical resources.

⁴ According to the Interior Board of Land Appeals (88 IBLA), the term *highly controversial* refers to “the substantial dispute as to the size, nature or effect of a major federal action, rather than to the existence of opposition to a use.”

⁵ According to the Council of Environmental Quality, Forty Question 2a, “Reasonable alternatives are those that are practical or feasible from the technical and economic standpoint...”

The Project Area is within the Virginia City National Historic District and National Historic Landmark. Within the Direct/Indirect Effects Area of Potential Effect (APE) for the Proposed Action, 12 sites have been recommended eligible for the NRHP. Eight of the 12 historic properties are located within or adjacent to the proposed disturbance area and have the potential to be adversely affected.

To resolve the potential adverse effects to the eight historic properties, the BLM has conducted extensive outreach to consulting parties (see Section 2.1.7.3 of the Revised Draft EA). A draft MOA has been written and is available for review (see Attachment D of the Revised Draft EA). Through execution of the MOA, the BLM would resolve potential significant effects under 40 CFR 1508.27.

The proposed function of the American Flat Road and Lucerne Haul Road is similar with the historic land use of the region. The Proposed Action would not cause visual effects to historic properties within the Virginia City Historic District (Viewshed APE).

9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the ESA or 1973.

There are no endangered or threatened species, or their critical habitat, within the Project Area.

10) Whether the action threatens a violation of federal, State, or local law or requirements imposed for the protection of the environment.

The Proposed Action is in conformance with the Carson City Field Office Consolidated Resource Management Plan (2001). Implementation of the Proposed Action would not violate or threaten to violate any federal, State, or local law or requirement imposed for the protection of the environment.

Leon Thomas
Field Manager
Sierra Front Field Office

Date